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Attorneys for Defendants  
 HAROLD B. GLASSBERG, HAROLD B.  
 AUERBACH, ROBERT L. POLLAK,  
 GLASSBERG, POLLAK & ASSOCIATES

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION**

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Plaintiff,

vs.

HAROLD B. GLASSBERG, HAROLD B.  
 AUERBACH, JON-MICHAEL McSWEENEY,  
 ROBERT L. POLLAK, GLASSBERG,  
 POLLAK & ASSOCIATES, NORTHFIELD  
 MOUNT HERMON SCHOOL, A  
 CORPORATION, AND DOES 1-25

Defendants.

Case No: CV 07 5683 MMC

**DEFENDANTS' HAROLD B.  
 GLASSBERG, HAROLD B. AUERBACH,  
 ROBERT L. POLLAK, JON-MICHAEL  
 MCSWEENEY, GLASSBERG, POLLAK &  
 ASSOCIATES NOTICE OF MOTION  
 AND MOTION TO DISMISS (FEDERAL  
 RULE OF CIVIL PROCEDURE 12(b)(6))**

Complaint Filed: October 2, 2007

**DATE: January 4, 2008  
 TIME: 9:00 a.m.  
 DEPT.: Courtroom 7**

**TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on January 4, 2008, at 9:00 a.m., or as soon thereafter as the matter may be heard, in the Courtroom of the Honorable Maxine M. Chesney, United States District Judge, in Courtroom 7 of the United States Courthouse located at 4050 Golden Gate Ave., San Francisco, California, defendants Harold B. Glassberg, Harold B. Auerbach, Robert L. Pollak, Jon-Michael McSweeney, and Glassberg Pollak & Associates ("Defendants") will, and hereby do move the court to dismiss all of Plaintiff's claims in its complaint.

1 This motion is made pursuant to Federal Rule of Civil Procedure 12 (b)(6) and is brought  
 2 upon the grounds that Plaintiff fails to state a claim against Defendants upon which relief may be  
 3 granted. Specifically, Plaintiff's causes of action fail on the following grounds:

4 (1) Plaintiff's causes of action for fraud, intentional infliction of emotional distress,  
 5 negligent infliction of emotional distress, constructive fraud, abuse of process, negligence, legal  
 6 malpractice, violation of the Rosenthal Fair Debt Collection Practices Act, and Unfair Business  
 7 Practices are barred by the California Litigation Privilege, Cal. Civ. Code § 47(b);

8 (2) Plaintiff's causes of action for constructive fraud, negligence and legal  
 9 malpractice fail as Defendants did not owe Plaintiff a legal duty;

10 (3) Plaintiff's causes of action for breach of contract and breach of the implied  
 11 covenant of good faith and fair dealing fail because Defendants did not enter into a contract with  
 12 Plaintiff;

13 (4) Plaintiff's cause of action for violation of the Fair Debt Collection Practices  
 14 ("FDCPA") Act fails because Defendants' alleged conduct does not amount to "communication"  
 15 under the FDCPA; and,

16 (5) Plaintiff does not plead a twelfth cause of action.

17 This motion is made upon the pleadings and proceedings had herein, Defendants' notice  
 18 of motion and motion to dismiss, plaintiff's memorandum of points and authorities filed in  
 19 support of this motion, and the reply brief to accompany this motion.

20 DATED: November 13, 2007

HINSHAW & CULBERTSON LLP

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 22  
 23 By: 

BRADLEY M. ZAMCZYK  
 JOANNA BRAYNIN  
 Attorneys for Defendants HAROLD B.  
 GLASSBERG, HAROLD B. AUERBACH,  
 ROBERT L. POLLAK, GLASSBERG,  
 POLLAK & ASSOCIATES

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